THE EXCLUSION OF ASIATIC IMMIGRANTS IN AUSTRALIA

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In the history of the Australian colonies, now forming the Australian Commonwealth, the frequent recurrence of legislation directed against Asiatic immigrants is impressive. To quote one example, no sooner did the colony of Victoria obtain responsible government in 1855 than a restriction act was passed, imposing duties on the masters of vessels bringing Chinese to Victorian ports. This is typical of the attitude of all six colonies on the subject. Intermittently restrictive legislation continued till 1890, when public opinion seems to have subsided, to awaken again, with renewed apprehension, in the twentieth century—chiefly owing, be it said, to Japan's prominence in the East, dating from her entry into the family of nations in 1899. It is by no means difficult to realize the causes of this uneasiness.

Within a few days' steam of the northern shores lie the densely populated eastern countries, which demand expansion as a result of economic and other social forces. There are three whose inhabitants are represented in our alien population (which does not, however, exceed 5 per cent of the total). These are India, China and Japan, which together have a population of 715,000,000 people.

The following table is eloquent in its possibilities:[1]

Country.	Population to square mile.	Total population (approximate).	Area (square miles).
China	101.36	433,553,030	4,277,170
India (Brit.)	213.27	231,855,533	1,087,124
Japan	266.84	50,841,562	190,534
Australia	1.46	in 1901 4,347,037 now about 5,000,000	2,974,581

It is only of recent years that the true position of affairs has been apprehended by the mass of the people; this tardy recognition being mainly due to the isolation of Australia from world politics.

[1]Official Year Book Commonwealth, No. 2.

But even from the first, hidden under economic and other reasons, there has been an instinctive idea that to allow Asiatics to obtain a footing on the continent would be fatal. Twelve thousand miles from the parent and, at present, protecting state, the full recognition of the problem or rather the crisis has been seen in late years in the feverish desire for the desirable immigrant,—the white who is quickly naturalized under laws suitable to the situation in which we find ourselves.

State Legislation

State legislation is interesting from an historical point of view, and as illustrating the general trend of public opinion, but it should be remembered that state legislation has been practically superseded by the commonwealth acts to be discussed later. This is true, however, only so far as the state legislation conflicts impliedly or expressly with federal legislation. The power which the Parliament possesses of making laws with respect to immigration and emigration is not an exclusive power.[2]

The first act we notice is the Victorian restriction law of 1855, imposing a fine of £10 on the masters of ships bringing Chinese passengers to Victoria, for every Chinese landed. These provisions were afterwards adopted by South Australia in 1857, and by New South Wales in 1861, to be soon afterwards repealed owing to pressure by the British colonial office. In 1877 Queensland adopted practically the same act, with the further imposition of a poll tax, in 1884, of £50 to be paid by each Chinaman. Meanwhile the other five states had passed exclusion laws limiting the number of Chinese allowed to land from a vessel to the proportion of one to every hundred tons burden. These provisions were generally disregarded till 1888, when a sudden influx of Chinese took place, and popular apprehension grew. Several boat loads of Chinese immigrants were prevented by force from effecting a landing at Sydney and Melbourne. An intercolonial conference was held the same year and affirmed the general principle of the exclusion of Chinese and the desirability of uniform legislation on the subject. Exclusion bills were rushed through the various colonial parliaments. To take the New South Wales act as typical, the following provisions are prominent:

[2]Constitution Act, sec. 51, ss. XXVII.

1. The poll tax was raised to £100.

2. No ship to carry Chinese passengers in the proportion of more than one to every 300 tons burden.

3. The penalty on shipmasters for a breach of this law was £500.

This marks the end of anti-Chinese legislation, chiefly because the end of the acts had been attained; the inflow of Chinese had practically ceased in 1901. In the census of 1891 their numbers had been estimated at 38,000. In 1901 32,000 were the official figures of the number of Chinese in Australia.

Still in the six years preceding 1901 the arrival of colored aliens had exceeded the departures by 5,500. Japanese, Afghans and coolies from British India began to stray through the colonies. At an intercolonial conference, 1895, the desirability of extending the anti-Chinese laws to all colored aliens was affirmed. Attempts were made to do this at the same time in all the colonies (1896), but the British colonial office refused to confirm these acts, despite the important privy council decision in Chung Teong Toy *v.* Musgrove (1891), that a colonial government had the unrestricted right to shut out aliens. The acts were modified and finally passed, the main provision of each being the exclusion of any person who failed to write in some European language an application for admission to the colony. The inadequateness of this test is apparent. An application learned parrot-fashion would not be difficult for an intelligent Asiatic to master. This requirement was not completely amended till later federal legislation in 1901. The penalty for evasion was fines and imprisonment for the prohibited immigrant, followed by expulsion, and heavy fines directed against shipmasters and owners. Two principles seem to have been reached as the result of all these laws, and both have been embodied in the Commonwealth Alien Immigration Restriction Act, 1901. These are:

(1) That the better method of excluding undesirable immigrants is not a poll-tax, but a test of character and education. In other words, complete exclusion has taken the place of restriction.

(2) If the responsibility for undesirable immigrants is made to rest upon the shipmaster or shipowner exclusion legislation will be more efficacious.

This brings the history of anti-Asiatic legislation down to 1901. Its importance has always been recognized in colonial politics. In

fact, the necessity for uniform exclusion laws was one of the main factors in determining the six Australian colonies to federate in 1901,[3] and in the first year of its existence the new-born commonwealth embodied previous state laws into one sweeping statute.

Commonwealth Legislation

Under the authority conferred by the constitution to make laws with respect to immigration,[4] the parliament of the commonwealth passed the immigration restriction act, 1901, and the immigration restriction amendment act, 1905. Immigration into the commonwealth of persons comprised in the following classes is prohibited (sec. 3):

(*a*) Any person unable to write out at dictation by an officer a passage of fifty words in length in any prescribed language.

(*b*) Any person likely to become a charge upon the public.

(*c*) Any idiot or insane person.

(*d*) Any person suffering from an infectious or contagious disease.

(*e*) Any person who has within three years been convicted of a non-political offence, or has been sentenced to imprisonment for one year or more or has not served sentence or received a pardon (sec. 3).

(*f*) Any prostitute or person living on prostitution of others (sec. 3).

Exceptions.—To these restrictions there are exceptions:

(*a*) Any person holding a certificate of exemption.

(*b*) Members of King's regular forces.

(*c*) Master and crew of any public vessel, of any government.

(*d*) Master and crew of any other vessel during its stay in port, provided that if it be found before the vessel leaves the port that a member of the crew who in the opinion of the officer administering the act would have been a prohibited immigrant but for provisions of this section, is not on board, shall be deemed to have entered the commonwealth as a prohibited immigrant, until the contrary be proved.

(*e*) Any person duly accredited to the commonwealth by any other government.

Certificates of Exemption

Certificates of exemption from provisions of the acts are to be expressed as in force for a specified period only and may at any time be cancelled by the minister for external affairs. Upon ex-

[3]See Report of Intercolonial Convention, 1897.
[4]Constitutional Act, sec. 51, ss. XXVII.

piration or cancellation of such certificate the person named therein if found within commowealth shall be treated as a prohibited immigrant and deported (sec. 4); an exemption from dictation test is given to persons five years resident in the commonwealth (sec. 4a).

Liability of Masters and Owners of Vessels

Masters, owners and charterers of any vessel from which a prohibited immigrant enters the commonwealth shall be jointly and severally liable to penalty of £100 for each such immigrant (sec. 9). The minister for external affairs may authorize the detention for safe custody of a vessel from which a prohibited immigrant has entered the commonwealth; the vessel may be held for security, but may be released on security being given for payment of penalties which may be inflicted; in default of payment the vessel may be sold (sec 10). Masters of a ship in which a prohibited immigrant comes to the commonwealth shall provide a return passage to such (sec. 13a).

Evasion of Act by Immigrants and Others

Any immigrant who evades an officer, or enters the commonwealth at a place where no officer is stationed if thereafter found in the commowealth may be required to pass the dictation test, and failing, be deemed a prohibited immigrant (sec. 5). Any person may within one year of entering the commonwealth be required to pass the dictation test. Presumption of proof is against such person. Every prohibited immigrant entering or found within the commonwealth in evasion of act shall be guilty of an offence and upon conviction shall be liable to imprisonment for six months, and to be deported from the commonwealth, though imprisonment may cease for purpose of deportation, or if offender finds two sureties of £50 for leaving the commonwealth within one month (sec. 7). Any person wilfully assisting another to contravene a provision of this act is guilty of an offence (sec. 12).

General Provisions

An immigrant unable to pass the dictation test may be allowed to enter the commonwealth on the following conditions:

(*a*) Depositing £100 with officer.

(*b*) Receiving within thirty days of deposit a certificate of exemption.

Failing to receive certificate he must depart from the commonwealth when deposit shall be returned, otherwise deposit may be forfeited and he be treated as a prohibited immigrant (sec. 6). Any person other than a British subject convicted of violence against the person shall be liable at the expiration of imprisonment to be required to pass the dictation test, and failing shall be deported from the commonwealth as a prohibited immigrant (sec. 8). Any member of the police force or any customs officer may take necessary legal proceedings for enforcement of the act. Police may arrest without warrant a suspected prohibited immigrant (sec. 14). Where no higher penalty is imposed for an offence by this act, the penalty is to be £50 fine or six months imprisonment (sec. 18). The governor-general may make regulations empowering officers to determine whether any person is a prohibited immigrant (sec. 16).

The validity of the above acts as a whole was upheld in the case of Robtelms *v.* Brennan,[5] where the high court of Australia laid down that every state can decide what aliens shall become members of the community. This case further decided that every state had an unqualified right to expel or deport (see sec. 7 of act) as well as to prevent entering. The right can be exercised in whatever manner and to whatever place necessary for effective deportation.

A survey of the text of the acts as above would seem to show that the commonwealth parliament had only provided against the influx of uneducated or criminal persons, but a glance at one section of the act of 1901 and at its general administration will show that it is particularly directed against Asiatic immigration.

Thus the act of 1901 laid down a dictation test in any prescribed *European* language. So all Asiatics, save those acquainted with the European language were excluded. In point of fact only thirty-two Asiatics passed the test in the years 1902, 1903, 1904. In the act of 1905 the test was altered to be "in *any* prescribed language." The alteration was undoubtedly made with a view to remove a direct expression of offence against Asiatic peoples. This was the more necessary as British policy in the far East was and

[5] 4 C. L. R. 395.

is centered round a treaty of alliance with Japan. But the exclusion of Asiatics has since the 1905 act really been more rigid than under that of 1901. Only one native of Asia passed the dictation test in 1905 and none have passed it since. The explanation lies in the fact that no regulations have been made, as provided for under sec. 16, for the guidance of officers in deciding who are to be deemed prohibited immigrants. The officers administering the act have authority from the case of Chia Gee *v.* Martin.[6] There the high court of Australia laid down the important principle that it is for the officer and not the immigrant to select the European language for the dictation test; and although as noted above the act of 1905 alters the words "any European language" to "any language" it would seem that the decision would still hold good with respect to the choice of language resting with the officer. Thus at discretion he can exclude any immigrant whatever, even European—and of Asiatics educated as well as uneducated. At the present moment it is a matter of deepest offence to eastern races that no distinction is made in favor of those who represent their highest civilization.

As further illustrating the large amount of discretion allowed officers in the administration of the acts is the case of Preston *v.* Donohue.[7] In this case it was held that an officer having applied himself to the relevant question as to whether a member of a ship's crew found absent before the vessel clears the port is a prohibited immigrant, his opinion could not be questioned in a prosecution founded on that opinion.

As a principle of policy this discretion allowed to officers has always been exercised for the stringent exclusion of Asiatics. In this connection the case of Ah Yin *v.* Christie[8] is worthy of note. This decided that an infant born out of Australia, and who has never been here and is the son of a person domiciled in Australia, is irrelevant to the question whether that infant on coming here is a prohibited immigrant within the meaning of the acts.

The final proof that it is the policy of Australia to exclude Asiatics is afforded by the provisions of the naturalisation act of 1903. By this act an applicant for a certificate of naturalisation in the commonwealth must adduce evidence to show that he is not an

[6] 3 C. H. R. 649.
[7] 3 C. L. R. 1089.
[8] 4 C. L. R. 1428.

aboriginal native of Asia (sec. 5), provided that he has not already been naturalized in the United Kingdom, and even in this case the governor-general of the commonwealth may withhold such certificate on the grounds of public good (sec. 7). Since this act came into force, January 1, 1904, not one native of Asia has been naturalized in Australia. The legislation of the Australian parliament on the question of Asiatic immigration has therefore gone farther than that of the colonies which now form the commonwealth.

Questions of external affairs generally and that of immigration particularly present two aspects to Australian statesmen. There is the imperial aspect; the empire extends over diverse nationalities, including Asiatics, for example, natives of India; her foreign policy necessitates friendship with Asiatic races, for example, the treaty with Japan 1906. On the other hand, there is the local aspect; Australia is in proximity to the nations of the far East with their teeming populations, while her own scanty population is almost exclusively of European origin. That local needs have been provided for, even at some expense to those of an imperial nature, is immediately due to the added prestige which attaches to the commonwealth, as contrasted with disunited Australian colonies. At the bottom it is due to the greater freedom which is gradually being allowed by Great Britain to those of her dependencies which have been endowed with a large measure of responsible government.

Reasons for Legislation

The reasons for such drastic legislation fall naturally into three groups. (1) Physiological, (2) Economic, (3) Political, chiefly from the aspect of defence.

1. *Physiological.* With the examples of the two Americas before our eyes no other object lesson is needed to impress the Australian mind with the undesirable result of a land inhabited by people of two different colors. The mixture of one European nation with another may have a tendency for good, the faults of one species may be corrected by the infusion of foreign blood, and the result of such alliances may be virile and progressive. But in every case the outcome of the union between European and Asiatic or European and African has been a generation with the faults of both and the virtues of neither. If ever a great body of aliens

become domiciled in Australia, either to the north or south, two conceivable results might happen. The two elements might coalesce, as in the case of the hybrid communities in South America with fatal results to the individuality and energy which is the birthright of the pure white race. Or they would not coalesce as in the case of the negro and white population of the United States of America. In this case the problem of reconciling two antagonistic races to live in peace and fellowship is one which strains the best statesmanship. Even under the best rule occasional outbreaks would and do occur. Neither of these alternatives commends itself to a community whose alien population does not exceed at present 5 per cent of the total. Hence it is that every effort is made backed up by public opinion to administer the restriction acts as strictly as possible.

In all great cities the miserable mongrel springing from white and yellow is seen, and even now in the slums of Sydney, Melbourne and Brisbane he can be found, though but one in fifty of the small Asiatic population has a white mate. It is in the south, however, that there is cause for alarm. The north of Queensland, and the whole of the northern territory of South Australia have but a very sparse population of whites, a vast and for the most part fertile territory, and a dangerous proximity to Asiatic neighbors. There the physiological problem has manifested itself. There also to some extent the aboriginal native of Australia enters as a factor. Elsewhere, however, he may be ignored as an element in the nation's problems owing to his fast diminishing numbers. Every healthy community has the power of absorbing a certain number of these undesirable crosses, and apparently that is what is happening to the few half-breed children in the segregated aboriginal camps.

But the beginning of a hybrid race with all the vices and physical infirmities of the eastern coolie race is visible in the far northern corner of the continent, having its origin in the time before the immigration restriction acts. The Malay, Filipino and Japanese have crossed with Australian aboriginals. White half-castes have bred with Chinese, Malays and Manilamen, until the low type of humanity which results is dignified by the name of mongrel. But all these considerations have been rather instinctive and innate, than explicit in prompting anti-Asiatic legislation. Those most

emphasized have been reasons of economic and of political expediency.

2. *Economic.* This phase of the question of Asiatic immigration is viewed with peculiar interest by Australian statesmen. Their fear of the lowering of the standard of living is perhaps more acute than that of the statesmen of other countries by reason of peculiar natural circumstances.

In the first place with an area of 2,975,000 square miles the density of Australian population is only 1.46 persons per square mile, in comparison with Japan with a density of population of 266.84, British India with a density of 213.27 and China with a density of 101.36.[9] Such figures show that an unrestricted inflow of Asiatic labor would be fatal to Australian industrial interests. Secondly, not only the rate of remuneration of labor in Australia is high—as it should be in any new country, but the prosperity of the wage-earners has been increased by legislative experiments of a socialistic tendency in some of the states at least. Under systems of compulsory arbitration in industrial disputes, and of wages boards where employers and employees confer together under impartial presidents to regulate powers and conditions of work, strikes of any length or importance have almost ceased, and the interests of the wage-earning class are being carefully safeguarded.

Thus an inflow of cheap labor must be most carefully guarded against. A good deal has been said, however, in favor of colored labor being utilized in the tropical parts of Australia, which include more than two-fifths of the continent. But it is particularly for the cane-growing districts of Queensland and the northern territory of South Australia that colored labor has been advocated. It would seem, however, that labor of this description is not indispensable. By the Pacific Islanders laborers' act, 1901, the gradual deportation of Polynesians was ordered. At the same time a bonus was paid on white-grown sugar. As a result the production of sugar in the commonwealth has grown[10] and white labor is replacing the colored with no disastrous effect to the farmer.

It would seem that in tropical Australia there is no absolute need of colored labor—save in the pearl fisheries on the northern coasts, which only produce about £300,000 worth of shell annually.

[9]Including dependencies, Official Year Book of Australia, 1901-08.
[10]Official Year Book of Commonwealth, 1901-08.

Thus the general policy of the commonwealth seems justified. The careful regard paid to the retention of a high standard of living is seen in the contract immigrants act, 1905, which applies even to white labor. This act, in substance, provides that where immigrants enter Australia under contract, this contract must be in writing, and its terms approved by the minister for external affairs. The contract must not be made with intention to affect any industrial dispute; and remuneration of the contract immigrant is to be as high as the current wage. The penalty for abrogation of provisions of the act is £5 to the contract immigrant and £20 for the employer.

When such care is taken of the interest of Australian wage-earners as against the white immigrant desirable in every way but that he is under a contract to perform labor, the exclusion of colored aliens on economic grounds is at least part of a consistent policy. When the low standard at which Asiatics can live is borne in mind the policy seems justified.

3. *Defence.* This aspect of the question is a vital one. The need of an adequate system of defence was a principal factor in the movements which led to the foundation of the commonwealth. Australia, by reason of her geographical position, has in the past been outside the center of world politics. But there is every reason to believe that in the future the Pacific Ocean will be an important sphere of international activity and rivalry. America has recognized this; Japan has become a first-class power; China is awakening from the sloth of centuries, and Australia, with vast undeveloped territory, with a coast line of 11,310 miles, lies close to the rising nations of the East. Up to the present she has relied for immunity from attack upon Great Britain, at least as to naval defence. The question of establishing a navy is now prominent in the minds of our statesmen, a question the importance of which can be gauged by consideration of the present naval position of Great Britain in Europe. In fact the first steps have already been taken. If not at this moment, yet in a short time Great Britain will no longer possess the naval pre-eminence hitherto possessed over European powers. This will mean that the security of Australia will not continue to be absolute. She is separated by half the world from England, and from the point where British naval strength is of necessity concentrated. On the other hand, Northern Australia lies

within a few days' journey from the East. Asiatic nations must expand, and Australia, little developed, scantily populated, presents a natural field.

From the nation most in need of new territory for growth, of new fields for commercial development and which can best support its claims by arms—Japan—Australia is secured by the Anglo-Japanese treaty of 1906. But when this expires, when Manchuria ceases to satisfy her the crisis of the commonwealth will come. At present Australia has a land force, including permanent, militia and volunteer arms of 26,000 only,[11] although in a few years a general cadet system supported by the proposed conscription scheme will multiply this force many times. Lines of communication overland between the East and West, North and South do not yet exist, and the isolation of outposts of local defence would be fatal should a struggle occur in the next decade. When these circumstances are considered the policy of excluding Asiatics is justified by Australia's extreme needs. Any immigration that would tend to weaken the unity of a nation small in numbers, holding a territory of vast extent must be prevented.

Conclusion

In pursuance of its general policy of exclusion of colored aliens the Australian government passed in 1901 the Pacific Islands laborers' act. The terms and operation of this act are instructive as indicating the thoroughness with which the principle of a "White Australia" is upheld. It had been the custom in Queensland and Northern New South Wales to employ for varying terms of years the natives of the Pacific Islands as laborers on the sugar plantations. By this act no such laborer was to enter Australia after the 31st of March, 1904, with the exception of persons possessed of certificates of exemption under the immigration restriction act, 1901, persons employed as part of the crew of a ship, and persons registered under the Queensland acts (1880-92), such registration to last five years. None were to enter before this date except under a license. In 1902, under provisions of the federal act, licenses were granted to laborers who did not number more than three-quarters of those returning to the Pacific Islands in 1901. In 1903, licenses were granted to laborers numbering not more than half

[11] Official Year Book Commonwealth, No. 2.

of those who had returned to their native islands during 1902. No other licenses were granted, and all agreements made between natives and employers became invalid after the 31st of December, 1906.

The penalty for persons introducing or allowing a Pacific Islander to enter is £100, recoverable on summary conviction. In all cases the onus of proof that a person is not a Pacific Islander, shall be deemed to lie on the person alleged to be such. Finally under the act officers are authorized to bring before a court of summary jurisdiction a laborer, whom they suppose not to be employed under an agreement, and the court, if he is not so employed or has not been within the past month, shall order him to be deported from Australia. This was before the 31st of December, 1906. After that date the commonwealth minister for external affairs has had power to order any Pacific Island laborer found in Australia to be deported. The provisions of this act are now virtually of no effect, its end having been attained. Deportation did take place in a great number of instances. The test case in which it was decided that such deportation was within the commonwealth power is Robtelms *v.* Brennan, cited above. This right of expelling Kanaka laborers when exercised by a court of summary jurisdiction under the act is within the competence of the commonwealth. The right to expel implied the right to do all things to make the expulsion effective, and so the right of deportation was not conterminous with the limit of the territorial waters of a state.

As a result, of twelve thousand or more Kanakas which formed the floating population of the cane fields, none now remain. White men have successfully taken their place at a rate of pay, however, which is double that formerly given to Polynesians. To prevent the extinction of the industry an import duty of £6 per ton on foreign sugar was made under the federal tariff and a bonus of £2 per ton on sugar grown by whites in Australia was granted to the planters by act of parliament.

No expense is grudged to keep unsullied the policy, and more than a policy, the ideal of a "White Australia." This, as has been shown, is not a passing ebullition of feeling. It may be not inaptly described as the Monroe doctrine of Australia, only it should be borne in mind that we are acting with reference to Eastern Asiatic peoples only. The Australian continent is not a subject for future

colonization and further than that not even for present immigration on the part of eastern races. Any attempt in derogation of this doctrine would be viewed with grave apprehension by Australia, under the aegis of the British empire, and resented as an unfriendly act. This is true even though at present a great part of the continent is far from adequately occupied.